



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
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DIVISION OF ENFORCEMENT

April 23, 2020

**Via ECF and FX (212) 805 7912**

The Honorable John G. Koeltl  
United States District Judge  
United States Courthouse  
500 Pearl Street  
New York, NY 10007-1312

**Re: SEC v. Nicholas J. Genovese, et al., 18-cv-00942 (JGK) (SDNY)**

Dear Judge Koeltl:

We represent plaintiff Securities and Exchange Commission (the "Commission") in this matter. We are writing to request that the Court lift the stay in this proceeding in light of defendant Nicholas Genovese's judgment of conviction entered on February 12, 2020 (Dkt # 64) in the parallel criminal proceeding, USA v. Genovese, 1:18-cr-00183-WHP, and that Court's Order of Restitution entered April 20, 2020 (Dkt. # 80). This proceeding was stayed by order of the Court on June 21, 2018. (Dkt. # 21). The Commission has not been able to confer with Mr. Genovese as he is presently incarcerated and *pro se*.

In the parallel criminal proceeding before Judge William H. Pauley III, Genovese pled guilty and on February 12, 2020, the Court sentenced him and entered a judgment of conviction imposing a 140 months prison sentence and financial relief, including restitution in the amount of \$11,211,704. On February 18, 2020, Genovese filed a notice of appeal. On March 11, 2020, the Court stayed the appeal pending a determination of Genovese's "motion to proceed in forma pauperis" as his criminal counsel had withdrawn. On April 20, 2020, Judge Pauley entered the Order of Restitution that provides that Genovese will pay restitution of \$11,211,704 and sets forth the mechanism for payments by Genovese and distribution of assets to victims.

Currently pending before the Court in this proceedings are the civil claims against Genovese and the two entity defendants that are his alter egos: Defendants Willow Creek Investments, LP and Willow Creek Advisors LLC. During the current health crisis, it is particularly challenging to communicate with prisoners and Genovese is *pro se* in this matter and

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the two defendant entities also are not represented: All the defendants were served with the summons and complaint on April 11, 2018 (Dkt. ## 17, 18, 19) and no answers have been filed.<sup>1</sup>

The Commission respectfully requests that the Court lift the stay, order the defendants to answer the complaints within 60 days, and provide the Commission with 90 days to attempt to confer with Genovese for the purpose of resolving this proceeding on consent. The Commission proposes that if the parties cannot reach such a settlement within 90 days, the Commission will then go forth with a motion for default relief, or to the extent the defendants file answers (and the entity defendants obtain counsel), a motion for summary judgment based on collateral estoppel flowing from the criminal judgment against Genevose.

If Your Honor has any questions, please do not hesitate to contact me at 212 336-0178.

Respectfully submitted,



Alexander M. Vasilescu

cc: Nicholas Genovese in his personal capacity and/or owning or controlling Defendants Willow Creek Investments, LP and Willow Creek Advisors LLC. **Via U.S. Mail.**

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<sup>1</sup> On March 24, 2020, the Enforcement Division of the Commission commenced an administrative proceeding before the Commission against Genovese based on his criminal judgment to determine “[w]hat, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 203(f) of the Advisers Act.” The Enforcement Division is seeking an associational bar.